IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

SA.No. 239 of 1993()

(AGAINST THE DECREE AND JUDGMENT DATED 18.2.1993 IN A.S.NO.4/1991 ON THE FILE OF THE SUB COURT, QUILANDY WHICH WAS AN APPEAL FROM THE DECREE AND JUDGMENT DATED 30.11.1990 IN O.S.NO.120/1987 ON THE FILE OF THE MUNSIFF'S COURT, PAYYOLI).

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APPELLANTS:(RESPONDENTS 1 TO 4,6,10 & 11/DEFENDANTS 1 TO 4,7,12 & 13):

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1. **K.P.KUNHIRAMAN NAIR, S/o.KELAPPAN NAIR.**
2. **KUNHIPARVATHI AMMA, W/o. K.P.KUNHIRAMAN NAIR.**
3. **PRAKASAN, S/o. K.P.KUNHIRAMAN NAIR.**
4. **MADHAVIKUTTY AMMA, D/o.CHATHU NAIR.**
5. **ACHUTHAN NAIR.**
6. **PADMANABHAN NAMBIAR, S/o. MATHU AMMA.**
7. **KARUNAKARAN NAMBIAR.(DIED LRS IMPLEADED)**

(APPELLANTS 1 TO 5 ARE RESIDING AT VALLIAYATH, PURAKKAD AMSOM, KOZHIPRAM DESOM, QUILANDY TALUK. APPELLANT 6 RESIDING AT EYYACHERRI THAZHA KUNIYIL, VANMUGHAM AMSOM, CHINGAPURAM DESOM, QUILANDY TALUK. APPELLANT 7 RESIDING AT KOMATHE PEEDIKAYIL, MOODADI AMSOM, MUCHUKUNNU DESOM QUILANDY TALUK.)

BY ADV. SRI.D.KRISHNA PRASAD

RESPONDENTS:(APPELLANTS 1 TO 7 AND RESPONDENTS 5,7, TO 9/LEGAL REPRESENTATIVES OF THE PLAINTIFF AND DEFENDANTS 6,8 TO 10)

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1. **AMMALU AMMA, VANMUGHAM AMSOM, CHINGAPURAM DESOM, QUILANDY TALUK.**
2. **KARUNAKARAN NAIR, VANMUGHAM AMSOM, CHINGAPURAM DESOM, QUILANDY TALUK.**
3. **SREEDHARAN NAIR, THEKKECHEMBRA HOUSE, VANMUGHAM AMSOM, CHINGAPURAM DESOM,QUILANDY TALUK.**

**4. ATHMARAMAN, VANMUGHAM AMSOM,
CHINGAPURAM DESOM, QUILANDY TALUK.**

**5. BHARGAVI, VANMUGHAM AMSOM,
CHINGAPURAM DESOM, QUILANDY TALUK.**

**6. SREEKUMARI, POOMADATHIL HOUSE,
VANMUGHAM AMSOM, CHINGAPURAM DESOM,
QUILANDY TALUK.**

**7. SEETHA, AYIMBADITHOTTATHIL HOUSE,
VILAYATTUR AMSOM AND DESOM, QUILANDY TALUK.**

**8. PADMANABHAN NAIR, RESIDING AT VALLIYATH,
PURAKKAD AMSOM, KOZHIPRAM DESOM,QUILANDY TALUK.**

**9. VIJAYAN, RESIDING AT VALLIYATH,
PURAKKAD AMSOM, KOZHIPRAM DESOM,QUILANDY TALUK.**

**10.RAJAN, RESIDING AT VALLIYATH,
PURAKKAD AMSOM, KOZHIPRAM DESOM,
QUILANDY TALUK.**

**11.RAMACHANDRAN, RESIDING AT VALLIYATH,
PURAKKAD AMSOM, KOZHIPRAM DESOM,
QUILANDY TALUK.**

(* R12 TO R14 IMPLEADED)

**12. DEVAKI AMMA, W/o. LARIMAKARAN NAMBIAR,
VADAKKEKOMATH HOUSE, MUCHILKUNNU,
KOZHIKODE.**

13. SURESH

14. SATHEESH

**(THE RESPONDENTS 13 AND 14 ARE THE CHILDREN OF
KARUNAKARAN NAMBIAR, VADAKKE KOMATH HOUSE,
MUCHILKUNNU,KOZHIKODE)**

(* SUPPL. 12TH RESPONDENT IS IMPLEADED AS THE LRS OF DECEASED 7TH APPELLANT AND SUPPL. RESPONDENTS 13 AND 14 ARE IMPLEADED AS THE LRS OF DECEASED 7TH APPELLANT AS PER ORDER DT.20.1.06 IN C.M.P.883/02 AND I.A.847/05 RESPECTIVELY)

**R1 TO R7 BY ADV. SRI.P.G.RAJAGOPALAN,
SRI.NARAYANIKUTTYCHETTUR
SRI.M.GOPIKRISHNAN NAMBIAR**

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.645 OF 1993 IN S.A.NO.239 OF 1993

DISMISSED.

22/6/2007 **Sd/- M.SASIDHARAN NAMBIAR,JUDGE**

TRUE COPY

P.A.TO JUDGE

M.SASIDHARAN NAMBIAR,J.

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S.A. NO.239 OF 1993

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Dated this the 22nd day of June, 2007

JUDGMENT

Defendants 1 to 4, 7, 12 and 13 in O.S.120/1987 on the file of Munsiff Court, Payyoli are the appellants. Respondents 1 to 7 are the legal heirs of deceased plaintiff and other respondents are defendants 6,8 and 10. The original plaintiff instituted the suit seeking a decree for permanent prohibitory injunction. Plaint schedule properties are 87 cents in survey No.3/3 of Chingapuram village and 32/10 of Kozhiprom village. The case of the plaintiff was that plaint schedule property originally belonged to the thavazhi of Gopalan Nambiar and was outstanding in the possession of Kannan under Ext.A1 registered kanam kuzhikanam deed executed by Gopalan Nambiar in favour of Kannan under Ext.A2 assignment deed dated 10.5.1954 Kannan assigned the property in favour of plaintiff and there was a partition in the thavazhi

of Gopalan Nambiar by which the property was allotted to the share of Kalliani Amma and her son Appunni Nambiar and thereafter Ext.A3 kanam kuzhikanam deed was executed by Kalliani Amma and Appunni Nambiar in favour of the plaintiff and there was a partition between Kalliani Amma and Appunni Nambiar and thereafter Ext.A4 jenm assignment deed was executed by Appunni Nambiar in favour of the plaintiff on 20.9.1969 and plaintiff has been in possession of the property as absolute owner since then and a portion of the said property was acquired and in that land acquisition proceedings, compensation was received by the plaintiff and defendants have no manner of right or possession over the property and they attempted to trespass into the plaint schedule property and they are to be restrained by a permanent prohibitory injunction. Defendants in their written statement contended that plaintiff has no title or possession over any property in R.S.32/10

of Purakkad amsom and as per Ext.A1 to A4 plaintiff obtained only the properties in Vanmugham village and the property by name Valliyathpoyil is in the possession and enjoyment of defendants 2, 4 and 5 under Ext.A16 settlement deed dated 16.5.1981 and they have right and title to the property and plaintiff fraudulently obtained compensation in LAR No.1105/1981 and plaintiff has no right over any property in purakkad amsom and therefore plaintiff is not entitled to the decree sought for. It was also contended that identity of the plaint schedule property is not clear and plaintiff is bound to take out a Commission to prepare a plan showing the extent and survey numbers etc.

2.Learned Munsiff appointed a Commission and the Commissioner submitted Exts.C1 plan and C2 report. On the evidence of Pws. 1 and 2, Dws.1 and 2, Exts.A1 to A16 and B1 to B12, learned Munsiff held that though under Ext.A1 and A2 the extent of the property shown is 87 cents, under Ext.A3 and A4

the extent of the property is only 75 cents and plaintiff has title to only 75 cents of the property and not the entire plaint schedule property. Learned Munsiff held that plaintiff is not entitled to the decree sought for. The suit was dismissed. As the plaintiff died by that time , his legal heirs filed A.S.4/1991 before Sub Court, Quilandy. Learned Sub Judge on reappreciation of evidence found that the disputed property is the property lying to the east of the admitted property of the defendants and to the west of the admitted property in the possession of the plaintiff and part of that property was acquired by the Government and in the reference under section 32 of Land Acquisition Act, compensation for the acquired portion was received by the plaintiff and though extent in Exts.A3 and A4 is shown as only 75 cents, boundaries in Exts.A1 and A2 are alsothe same and therefore property obtained under Exts.A3 and A4 is the same property covered under Exts.A1

and A2. On the evidence, learned Sub Judge found that plaintiff has established his possession of the plaint schedule property within the boundary shown in Exts.A1 to A4 and on reversal of the decree and judgment of the trial court granted a decree for permanent prohibitory injunction. It is challenged in this Second Appeal.

3. Second Appeal was admitted formulating the following substantial question of law.

When Exts.A3 and A4 clearly mention the exact extent, survey number and other relevant details of the property, was the first appellate court right in finding that plaintiff is entitled to some further extent on the basis of Exts.A1 and A2 and whether plaintiff is entitled to a decree for injunction?

4. Learned counsel appearing for appellants and respondents were heard.

5. Ext.C2 report with Ext.C1 plan prepared by the Commissioner show the admitted property of the

plaintiff, defendants and the disputed property. The disputed property is only having an extent of about 10 cents which lies in between the admitted properties of the parties. The first appellate court on appreciation of evidence found that the disputed portion of the plaint schedule property is called by name Valliyathpoyil. Evidence of PW1 and DW1 establish that the property acquired by the Government which was the subject matter of Section 32 reference in LAR 1105/1981 was in respect of the property comprised in Valliyathpoyil. It was the defendants themselves who produced Ext.B2, copy of the statement filed by the plaintiff in LAR 1105/1981 which also shows that name of the property acquired which was subject matter of reference is Valliyathpoyil. Ext.A5 order shows that compensation for that property was paid to the plaintiff.

6. The defendants are tracing out the right and title under Ext.A16 settlement deed. Item No.1 and

4 are the properties which forms the eastern and western part of the admitted property in the possession of the defendants. Western boundary of item No.4 which is the western portion of the property marked as plot C in Ext.C1 plan establish that the western boundary of the property obtained by appellants under Ext.A16 is Valliyathpoyil. If that be so, the property belonging to the defendants could only be to the west of Valliyathpoyil, which could only be further to the west of the disputed property.

7. Plaintiff in the plaint itself contended that there is a mud wall (Kollu) separating the plaint schedule property with the property of the defendants. DW1 admitted that there is a kollu. Ext.C2 report also establish that fact. On these evidence, first appellate court found that though there is a difference in extent in Exts.A3 and A4 on the one hand and Exts.A1 and A2 on the other, the boundaries are the same. It was argued by the

learned counsel appearing for appellants that even if the extent covered under Exts.A1 and A2 was 87 cents, Ext.A3 shows that there was measurement of the property and the lease granted under Ext.A3 is only 75 cents and the balance 12 cents was assigned by the landlord under Ext.B1 and so plaintiff cannot claim more than 75 cents. The description and boundaries of Ext.B1 shows that the property covered thereunder has no connection with the description of the boundaries in Exts.A1 to A4. If Ext.B1 is a portion of the property covered under Exts.A1 to A4, then at least on one side of the property, the boundary should tally. Therefore on the basis of Exts.B1, it is not possible to hold that plaintiff is not having any right or possession over the disputed property. Appreciating the entire evidence, first appellate court entered a factual finding that plaintiff has established his possession over the property covered under Exts.A1 to A4 within the boundaries shown and

plaintiff is entitled to a decree for injunction. I do not find any reason to interfere with that factual finding in the light of the evidence on records.

Appeal is dismissed.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

S.A.NO.239 /93

JUDGMENT

22ND JUNE,2006